

Report to the Los Angeles City Ethics Commission on
apparent violations of LAMC 49.5.5 by Los Angeles
City Staffers Amy Gebert and Bethelwel Wilson

August 27, 2020

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1 Synopsis

1. In June 2019 I requested copies of some emails from Amy Gebert at CD15. She has placed preposterous limits on my access, to the point where now, fifteen months after my request, she has hardly produced anything in response.
2. Furthermore, contrary to the Public Records Act and the Los Angeles City Charter Gebert has insisted on producing records in intentionally labor-intensive, unusable, and expensive formats to create a high cost for me in time and effort, probably intending to discourage me from making future requests.
3. She has been assisted in this effort by Deputy City Attorney Bethelwel Wilson, who has advised her to violate the City Charter in her responses to my request.
4. Both Gebert and Wilson have misused their official positions to create a private disadvantage for me, which is a violation of the Los Angeles Municipal Code.

2 Laws and rules

2.1 Laws

5. The Los Angeles Municipal Code at §49.5.5(A) states in part that:

City officials, agency employees, ... shall not misuse or attempt to misuse their positions ... to create or attempt to create a private advantage or disadvantage, financial or otherwise, for any person.

6. The California Public Records Act² (“CPRA”) requires local government agencies to provide copies of records to any person on request.³ It requires copies of electronic records to be provided in electronic format⁴ and it allows agencies to charge no more than “the direct cost of producing a copy of a record in an electronic format.”⁵
7. The Los Angeles City Charter at §103 states:

Every City office and department, and every City official and employee, is expected to perform their functions with diligence and dedication on behalf of the people of the City of Los Angeles. In the delivery of City services and in the performance of its tasks, the government shall endeavor to perform at the highest levels of achievement, including efficiency, accessibility, accountability, quality, use of technologically advanced methods, and responsiveness to public concerns within budgetary limitations. Every analysis and review of the performance of the government and its officers shall seek to ascertain

² California Government Code §6250 et seq.

³ At §6253.

⁴ At §6253.9.

⁵ At §6253.9.

whether these high standards are being met, and if not, shall recommend methods of improvement.

8. The Los Angeles City Charter [at §272](#) states:

The civil client of the City Attorney is the municipal corporation, the City of Los Angeles.

9. The California State Constitution [at Article I §3\(b\)\(1\)](#) states:

The people have the right of access to information concerning the conduct of the peoples business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

10. The California State Constitution [at Article I §3\(b\)\(7\)](#) states in pertinent part:

In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies, as specified in paragraph (1), each local agency is hereby required to comply with the California Public Records Act...

2.2 Rules

12. California State Bar Rule 1.2.1(a) states:

A lawyer shall not counsel a client to engage, or assist a client in conduct that the lawyer knows is criminal, fraudulent, or a violation of any law, rule, or ruling of a tribunal.

See [Exhibit 1](#) on page 15.

13. California State Bar Rule 1.13(a) states:

A lawyer employed or retained by an organization shall conform his or her representation to the concept that the client is the organization itself, acting through its duly authorized directors, officers, employees, members, shareholders, or other constituents overseeing the particular engagement.

See [Exhibit 2](#) on page 17.

14. California State Bar Rule 1.13(b) states:

If a lawyer representing an organization knows that a constituent is acting, intends to act or refuses to act in a matter related to the representation in a manner that the lawyer knows or reasonably should know is (i) a violation of a legal obligation to the organization or a violation of law reasonably imputable to the organization, and (ii) likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best lawful interest of the organization.

See [Exhibit 2](#) on page 17.

3 Background

15. Amy Gebert is CD15 representative Joe Buscaino’s director of communications. She handles CPRA requests made to CD15.
16. NextRequest (“NR”) is a web platform, purchased by the City of Los Angeles (“CoLA”), which some departments use to process CPRA requests. It facilitates the review, redaction, and production of various kinds of electronic files.
17. Bethelwel Wilson is a Deputy City Attorney. He is currently in charge of the City Attorney’s CPRA department.

4 Facts

4.1 The CPRA request

4.1.1 Request and negotiations

18. On June 30, 2019 I sent Amy Gebert a request for emails about the homeless crisis in CD15 from the first half of 2019 containing any of a list of keywords. See [Exhibit 3](#) on page 19.
19. On July 24, 2019 Gebert denied my request, stating that:

[b]ased on our estimates this search would produce up to 20,000 records and take over 18 months to compile. The staff time required to compile this request clearly outweighs the public interest served by completing this request therefore under Gov Code Section 6255 the office is denying this request.

See [Exhibit 4](#) on page 21.

20. I replied the same day with an offer to narrow my request to only the most recent 14,400 records based on an opinion of the California Supreme Court holding that this kind of claim failed in a case where the agency estimated fulfilling it would require 40 hours of staff time. See [Exhibit 5](#) on page 23.
21. Gebert refused to accept my narrowing, so on August 7, 2019 I radically narrowed my already significantly narrowed request. See [Exhibit 6](#) on page 26.
22. On August 16, 2019 Gebert told me that even with this significant narrowing the records responsive to the new request “would require over a year to review.” See [Exhibit 7](#) on page 28.

23. On August 23, 2019 Gebert revised her previous time-to-completion estimate of “over a year” to “until April 2021.” She also stated that even with my request-narrowing there were still over 10,000 pages of responsive records.⁶ See [Exhibit 8](#) on page 30.
24. I asked Gebert repeatedly for updates on the status of the request. As late as November 15, 2019 Gebert told me that she had none of this material ready for inspection. See [Exhibit 9](#) on page 32. I asked again on January 23, 2020 but Gebert did not respond. See [Exhibit 10](#) on page 34.

4.1.2 Gebert produces two tranches of records

25. Finally, on March 2, 2020 Gebert informed me that she had some records ready. She told me that “Our office must print responsive records for redaction purposes.” See [Exhibit 11](#) on page 36.
26. I asked Gebert to scan the paper and email PDFs to me. See [Exhibit 12](#) on page 38. Gebert did not answer.
27. On August 4, 2020 Gebert sent me a number of PDFs containing scans of printed⁷ emails that she claimed were responsive to the request.⁸ See [Exhibit 13](#) on page 40.
28. On August 4, 2020 I asked Gebert to produce the emails in either EML or MBOX format. See [Exhibit 14](#) on page 42.

4.1.3 Bethelwel Wilson enters the picture

29. On August 4, 2020 after my exchange with Gebert I asked Bethelwel Wilson if someone at the City would be willing to meet and confer about this request in the hope of avoiding another lawsuit.⁹ See [Exhibit 15](#) on page 44.
30. On August 5, 2020, after some tangential discussion, Wilson told me that “[w]e will check in with Ms. Gebert regarding status.” See [Exhibit 16](#) on page 46.

4.1.4 CD15’s technological capabilities per Gebert

31. On August 7, 2020 Gebert responded to my August 4, 2020 email, stating in pertinent part:

...our office does not have the technology or the staff with the level of technical expertise needed to produce/redact in MBOX format.

⁶ Note Gebert’s change from number of records to number of pages.

⁷ Printed on actual paper and then scanned.

⁸ Many of them were not responsive to any request of mine. This makes the material much harder to use and is characteristic of the lack of care shown by Gebert in handling this request.

⁹ I have filed many CPRA petitions against the City of Los Angeles. Wilson defended (or is defending) most of them.

4.2 City of Los Angeles Information Technology Agency

4.2.1 What is ITA?

32. The City of Los Angeles Information Technology Agency (“ITA”), on their website at <https://ita.lacity.org/about-ita>,¹⁰ describes itself thus:

Under the leadership of Mayor Eric Garcetti, the Information Technology Agency (ITA) works with agencies and departments across the City of Los Angeles to develop world-class IT infrastructure and applications that provide our citizens, businesses, and visitors with the digital services they expect from a leading global city.

33. On the same page ITA describes its “internal” customers, meaning City departments, thus:

- Internal within City government
 - 18 elected officials
 - 48,000 City employees
 - 41 City departments

4.2.2 ITA, MBOX, CPRA, redactions, and Gebert

34. One of the services ITA provides to its internal customers is export of emails in MBOX format in response to CPRA requests. The procedure requires a department to complete a form and submit it to ITA. See [Exhibit 18](#) for a copy of this form submitted to ITA by the Bureau of Engineering (“BOE”) seeking such an export in response to a CPRA request.
35. On August 2, 2020 I submitted [CPRA request 20-5250](#) via NR to BOE for emails in MBOX format. According to BOE staffer Richard Louie in a comment on the request:

ITA provided the email from the retired staff member in mbox format.

See [Exhibit 19](#) on page 53.

36. The City’s email provider is Google. The section in Google’s user manual on exporting emails in MBOX format specifically notes that they can be opened in a text editor:

... you can open [mbox] messages in ... Mozilla Thunderbird or a text editor.

See [Exhibit 20](#) on page 55.

37. On August 7, 2020, via email, I advised Gebert that all of these technological methods and assistance were available to CD15 for the asking. She did not respond. See [Exhibit 21](#) on page 57.

¹⁰ Retrieved on August 18, 2020.

4.3 NextRequest

38. As mentioned above in [Paragraph 16](#), the City of Los Angeles provides access to NextRequest software for all departments, including CD15. The software allows users to redact and produce records in electronic format. See [Exhibit 22](#) on page 59.¹¹
39. NextRequest allows for rapid and efficient batch redaction using an add-on module that the City of Los Angeles also provides for all departments. See [Exhibit 23](#) on page 61 for an invoice from NextRequest to CoLA showing that the City’s NR installation includes this module.
40. Amy Gebert was in communication with NextRequest staff in November 2019 to discuss CD15’s use of the software. See [Exhibit 24](#) on page 63.

4.4 The 2012 Felker-Kantor request for LAPD records

41. On August 4, 2012 historian Max Felker-Kantor, then at the University of Southern California, submitted a CPRA request to the City of Los Angeles via LAPD asking for 27 years worth of records of various kinds. I do not have a copy of this request, but it’s quoted in LAPD Discovery staffer Martin Bland’s August 6, 2012 response, which appears below as [Exhibit 25](#) on page 65. All quotes in this subsection are from this letter.
42. On August 6, 2012 Bland responded to Felker-Kantor’s request. He stated that there were 254 archival boxes of responsive material, each containing about 3,000 pages of records. He said that LAPD would review one to two boxes per weeks and release them for Felker-Kantor’s inspection. Again, see [Exhibit 25](#) on page 65.

5 Conclusions

5.1 Amy Gebert

5.1.1 Gebert misused her position

5.1.1.1 Efficiency and technology

43. The Los Angeles City Charter at §103 requires City officials to “endeavor to perform at the highest levels of achievement, including efficiency, . . . [and] use of technologically advanced methods.” Success in complying with this mandate is a required element of City Officials’ job performance reviews. See [Paragraph 7](#) above.

5.1.1.1.1 ITA and MBOX

44. Gebert insists on producing copies of emails by printing them and scanning the paper pages to unsearchable PDFs. See [Paragraph 25](#) above. This is a less technologically advanced method of producing emails than using MBOX files.

¹¹ See “Task 6” on page 2 of the internal document pagination.

45. Gebert is able to ask ITA to export emails as MBOX files and to redact them in a text editor. See [Section 4.2.2](#) above. This is a more technologically advanced method of producing emails than printing them and scanning the printed pages. It is also significantly more efficient and cheaper.
46. Gebert is aware that the ITA option is available to her but refuses to use it despite the fact that it is technologically more advanced, faster, less work, and less expensive. See [Paragraph 25](#) above.

5.1.1.1.2 NextRequest

47. Gebert insists on producing copies of emails by printing them and scanning the paper pages to unsearchable PDFs. See [Paragraph 25](#) above. This is a less technologically advanced method of producing emails than using NextRequest's batch redaction tool, which also preserves searchability.
48. Gebert is aware that NextRequest is available for her use and she is aware of its capabilities. See [Section 4.3](#) above.

5.1.1.1.3 Summary

49. Generally it's very difficult to argue that someone actually failed to "endeavor to perform" in a certain manner. In this case, though, I've shown that Gebert actually worked hard to do the opposite of what is required of her by her position. Endeavoring not to perform a task implies not endeavoring to perform it. Therefore Gebert failed to comply with the City Charter, a misuse of her position.
50. These intentional choices of Gebert's constitute a failure to "endeavor to perform" efficiently or by "use of technologically advanced methods" and must be considered in her future performance reviews.
51. City employees are hired with the expectation that they will comply with job requirements endeavor to meet the standards by which their performance is reviewed. Therefore an intentional failure to do these things is a misuse of position.
52. Gebert's insistence on producing emails via printing and scanning is a misuse of her position.

5.1.1.2 Public concerns and budget

53. Printing emails on paper costs more money than not printing them.
54. Scanning printed pages to PDF files costs more money than not doing so.
55. The process of printing a file involves the computer exporting it and sending it to a printer. The process of exporting a file involves exporting it and writing it to a storage medium. The printer adds supply costs, wear and tear, and operator's salary to the cost of export.

56. Therefore producing emails by printing and scanning is more costly than exporting them as files.
57. The Charter at §103 requires City employees to endeavor to be “[responsive] to public concerns within budgetary limitations.” Gebert’s insistence on printing and scanning emails even though it would be less expensive to export them and even though I asked her to export them is her intentionally being unresponsive to public concerns without regard to budgetary limitations and is therefore a violation of this section.
58. Which is, as before, a misuse of position.

5.1.2 To disadvantage me

59. Gebert has made a series of choices in how to respond to my request:
 - (a) To delay producing any responsive material for nine months.
 - (b) To spend money printing records on paper and scanning printouts
 - (c) To spend staff time printing records on paper and scanning printouts
 - (d) To export emails to non-searchable PDFs
 - (e) To use technologically primitive methods when technologically advanced methods are available at no cost to CD15
 - (f) To use methods that unnecessarily use large amounts of staff time, which then justifies production delay
 - (g) Before the pandemic to require me to inspect records in person rather than transfer electronic records electronically
60. Each one of these choices degrades the utility of the requested records. None of them enhances it and none of them is neutral toward it.
61. It’s entirely implausible that it’s due to chance that the consistent effect of every aspect of Gebert’s CPRA policy makes records less useful to me and/or less available.
62. Gebert’s actions, already shown to be a misuse of her position, create a disadvantage for me.

5.1.3 Privately

5.1.3.1 Policy

63. It’s clear from the progress of this request that Gebert is not following established policy either of CoLA or of CD15 in her responses to my request.
64. If she were following established CD15 policy she would have said so at some point.
65. If she were following CoLA policy then other departments would mimic her responses, but they do not.¹²

¹² Except for CD9, but these two are the only departments that respond like this.

66. Since Gebert is not following policy she's adapting her responses to me personally, which makes the disadvantage she's misusing her position to create private to me rather than public in the sense of being applicable to all.

5.1.3.2 Comparison

67. It's essentially impossible for me to obtain information for comparison from CD15 on other CPRA requests Gebert has handled, how quickly she handled them, and what file formats she used to produce them. My only means of doing this would be to make additional CPRA requests, which as I've shown is not an effective option.
68. However, CoLA is perfectly capable of handling large CPRA requests quickly on certain occasions, as shown above in [Section 4.4](#).
69. If LAPD was capable of processing three to six thousand pages a week for a historian from USC it's absolutely implausible that as a matter of general policy any City Department would legitimately require 18 months to process 10,000 pages. The latter is a rate of only 139 pages per week, which is 4.7% of the minimum rate announced by LAPD.
70. While LAPD does have dedicated staff to process requests, they don't currently have 10 staff, and they had fewer than that in 2012.¹³ Furthermore Martin Bland is clear in his response to Felker-Kantor that his staff will not be processing records full time.
71. Assume for the sake of an estimate that LAPD discovery had had 10 staff members at the time they processed Felker-Kantor's request. Then working part time they were able to process pages at a rate of 300 to 600 pages per staffer.
72. This is between 215% and 430% of Gebert's proposed rate. That she proposed such a low rate when other City agencies are able to double or even quadruple her rate for other requesters suggests that the disadvantage is aimed at me personally, and is thus private.

5.2 Bethelwel Wilson

5.2.1 Wilson misused his position

5.2.1.1 Wilson advised Gebert to violate the City Charter

73. It's apparent from the timing of the events described above in [Section 4.1.3](#) and [Section 4.1.4](#) that Wilson advised Gebert to inform me that CD15 didn't have the technical capabilities to produce emails other than by printing them on paper.
74. As shown in the foregoing, this advice caused Gebert to violate the law.
75. State Bar Rule 1.2.1(a) forbids attorneys from advising their clients to violate the law. See [Paragraph 12](#) above.
76. Wilson's violation of a State Bar Rule is a misuse of his position.

¹³ I know this from personal experience

5.2.1.2 A note on evidence and privilege

77. As mentioned above in [Paragraph 8](#), the City of Los Angeles is the client of the City Attorney's Office.
78. State Bar Rule 1.13(a) states that the City Attorney's client is the City itself, acting through its employees and officials. See [Paragraph 13](#) above.
79. Therefore it doesn't violate attorney/client privilege for authorized City personnel to review Wilson's advice.
80. Thus while I am unable to find evidence that Wilson advised Gebert to violate the law, City Ethics Commission investigators are able to do so.

5.2.2 To disadvantage me

81. The point of Gebert's actions was to disadvantage me. Wilson knows or should have known this from discussing the matter with Gebert.
82. The only plausible purpose of Wilson's advising Gebert on how to disadvantage me is to disadvantage me.

5.2.3 Privately

83. As above, the point of Wilson's advise was to allow Gebert to create a private disadvantage for me. His assistance wasn't intended to create policy or to allow Gebert to disadvantage others. Therefore the disadvantage created by Wilson's position misuse is private.

6 Requested action

84. I ask that the Ethics Commission investigate this matter and impose appropriate consequences on Gebert.

7 Exhibits

7.1 Exhibit 1 – California State Bar Rule 1.2.1



The State Bar of California

Rule 1.2.1 Advising or Assisting the Violation of Law (Rule Approved by the Supreme Court, Effective November 1, 2018)

- (a) A lawyer shall not counsel a client to engage, or assist a client in conduct that the lawyer knows* is criminal, fraudulent,* or a violation of any law, rule, or ruling of a tribunal.*
- (b) Notwithstanding paragraph (a), a lawyer may:
 - (1) discuss the legal consequences of any proposed course of conduct with a client; and
 - (2) counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of a law, rule, or ruling of a tribunal.*

Comment

[1] There is a critical distinction under this rule between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud* might be committed with impunity. The fact that a client uses a lawyer's advice in a course of action that is criminal or fraudulent* does not of itself make a lawyer a party to the course of action.

[2] Paragraphs (a) and (b) apply whether or not the client's conduct has already begun and is continuing. In complying with this rule, a lawyer shall not violate the lawyer's duty under Business and Professions Code section 6068, subdivision (a) to uphold the Constitution and laws of the United States and California or the duty of confidentiality as provided in Business and Professions Code section 6068, subdivision (e)(1) and rule 1.6. In some cases, the lawyer's response is limited to the lawyer's right and, where appropriate, duty to resign or withdraw in accordance with rules 1.13 and 1.16.

[3] Paragraph (b) authorizes a lawyer to advise a client in good faith regarding the validity, scope, meaning or application of a law, rule, or ruling of a tribunal* or of the meaning placed upon it by governmental authorities, and of potential consequences to disobedience of the law, rule, or ruling of a tribunal* that the lawyer concludes in good faith to be invalid, as well as legal procedures that may be invoked to obtain a determination of invalidity.

[4] Paragraph (b) also authorizes a lawyer to advise a client on the consequences of violating a law, rule, or ruling of a tribunal* that the client does not contend is unenforceable or unjust in itself, as a means of protesting a law or policy the client finds objectionable. For example, a lawyer may properly advise a client about the consequences of blocking the entrance to a public building as a means of protesting a law or policy the client believes* to be unjust or invalid.

7.2 Exhibit 2 – California State Bar Rule 1.13



The State Bar of California

Rule 1.13 Organization as Client (Rule Approved by the Supreme Court, Effective November 1, 2018)

- (a) A lawyer employed or retained by an organization shall conform his or her representation to the concept that the client is the organization itself, acting through its duly authorized directors, officers, employees, members, shareholders, or other constituents overseeing the particular engagement.
- (b) If a lawyer representing an organization knows* that a constituent is acting, intends to act or refuses to act in a matter related to the representation in a manner that the lawyer knows* or reasonably should know* is (i) a violation of a legal obligation to the organization or a violation of law reasonably* imputable to the organization, and (ii) likely to result in substantial* injury to the organization, the lawyer shall proceed as is reasonably* necessary in the best lawful interest of the organization. Unless the lawyer reasonably believes* that it is not necessary in the best lawful interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.
- (c) In taking any action pursuant to paragraph (b), the lawyer shall not reveal information protected by Business and Professions Code section 6068, subdivision (e).
- (d) If, despite the lawyer's actions in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or fails to act, in a manner that is a violation of a legal obligation to the organization or a violation of law reasonably* imputable to the organization, and is likely to result in substantial* injury to the organization, the lawyer shall continue to proceed as is reasonably* necessary in the best lawful interests of the organization. The lawyer's response may include the lawyer's right and, where appropriate, duty to resign or withdraw in accordance with rule 1.16.
- (e) A lawyer who reasonably believes* that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b), or who resigns or withdraws under circumstances described in paragraph (d), shall proceed as the lawyer reasonably believes* necessary to assure that the organization's highest authority is informed of the lawyer's discharge, resignation, or withdrawal.
- (f) In dealing with an organization's constituents, a lawyer representing the organization shall explain the identity of the lawyer's client whenever the lawyer knows* or reasonably should know* that the organization's interests are adverse to those of the constituent(s) with whom the lawyer is dealing.
- (g) A lawyer representing an organization may also represent any of its constituents, subject to the provisions of rules 1.7, 1.8.2, 1.8.6, and 1.8.7. If the organization's consent to the dual representation is required by any of these rules, the consent

7.3 Exhibit 3 – CPRA Request CD15.2019.06.30.a

Subject: CPRA request (CD15.2019.06.30.a)
From: adrian@123mail.org
Date: 6/30/19, 7:03 PM
To: "Amy Gebert" <amy.gebert@lacity.org>

Good afternoon, Ms. Gebert!

Today I am looking for all emails in the possession of anyone at CD9 including Mr. Buscaino using any email addresses whatsoever from January 1, 2019 through June 30, 2019 that:

1. contain the word "encampment" OR
2. are to/from/cc/bcc anyone at LA Sanitation OR
3. contain the string "UHRC"

thanks, Ms. Gebert!

Adrian

7.4 Exhibit 4 – Gebert’s July 24, 2019 denial

Subject: Re: CPRA request (CD15.2019.06.30.a)

From: Amy Gebert <amy.gebert@lacity.org>

Date: 7/24/19, 10:16 PM

To: adrian@123mail.org

To Whom It May Concern,

This is a very broad request due to many reasons including that the words encampment and UHRC and emails to, from and bcc LA Sanitation are used in a variety of circumstances and discussion topics. Based on our estimates this search would produce up to 20,000 records and take over 18 months to compile. The staff time required to compile this request clearly outweighs the public interest served by completing this request therefore under Gov Code Section 6255 the office is denying this request.

All the best,

Amy

--

Amy Gebert | Communications Deputy | Councilman Joe Buscaino
City of Los Angeles | www.la15th.com



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Avalon Arts & Cultural Alliance: [Wilmington Art Walk](#)

7.5 Exhibit 5 – My July 24, 2019 offer to narrow

Subject: Re: CPRA request (CD15.2019.06.30.a)

From: adrian@123mail.org

Date: 7/24/19, 10:32 PM

To: "Amy Gebert" <amy.gebert@lacity.org>

Hi Ms. Gebert!

First of all, your language makes it very clear that you have not run the search. In fact, if your argument made any sense whatsoever then every CPRA request which would turn up less than or equal to 20,000 records could be denied on the basis of section 6255(a). Since that's obviously wrong the argument must be wrong as well.

Furthermore, your claim that this request would take "over 18 months to complete" isn't an adequate response under the CPRA seeing as it's not based on an actual search. Not only that, but you're basing your 6255(a) claim on "the staff time required to compile this request" but you haven't actually calculated it. Obviously you don't mean 18 months of full time work. This would comprise $18 \times 4 \times 40 = 2880$ hrs and, even if your random guess about 20,000 records is correct, you'd be assuming that each record would take $2880 \text{ hrs} / 20000 \text{ records} = 0.14 \text{ hrs per record}$ which is, obviously, 8.64 minutes per email. That's crazy, clearly.

In my own experience with reviewing emails it is exceedingly easy to review one in 10 seconds. This is 360 per hour, which, if there really are 20,000, would amount to only 55.5 hours to review 20,000 records. Now, as I am sure the DCA who wrote your response will tell you, Weaver v. Superior Court held that, for a request implicating matters in which the public is exceedingly interested, the death penalty in that case, 40 hours of staff time was insufficient to support a 6255(a) claim on the basis of public interest in saving some labor.

Homelessness in Los Angeles is, as I am sure you're aware, Ms. Gebert, presently of the very highest public interest. Why, your own boss writes op-eds for the Times on it. He fumes in public about the City Attorney settling Mitchell, and so on. Not only that, but homelessness kills infinitely times more people per year in Los Angeles than does the death penalty, which certainly raises the level of public interest involved.

Therefore, Ms. Gebert, I propose to you that on the basis of your own count of 20,000 records, even though it's pretty likely to be wrong, and the Weaver Court's holding that 40 hours of staff time couldn't support a 6255(a) claim, and on the basis of my more

sensible calculation of 360 records reviewed per hour, that you commit to providing me with the most recent 14,400=40*360 records that satisfy my search criteria.

If for some reason you want to dispute this matter further, that's fine. As far as I'm concerned it is part of the statutorily mandated process of assisting me to overcome practical obstacles to access. Please, though, Ms. Gebert, don't just reiterate your position. I hope you will give a reasoned response, supported by factual claims. This will show that CD15 is willing to meet the required burden of proof for such matters.

Thanks, Ms. Gebert, and I look forward to your reasoned response!

Adrian

On Wed, Jul 24, 2019, at 10:16 PM, Amy Gebert wrote:

To Whom It May Concern,

This is a very broad request due to many reasons including that the words encampment and UHRC and emails to, from and bcc LA Sanitation are used in a variety of circumstances and discussion topics. Based on our estimates this search would produce up to 20,000 records and take over 18 months to compile. The staff time required to compile this request clearly outweighs the public interest served by completing this request therefore under Gov Code Section 6255 the office is denying this request.

All the best,
Amy

--

Amy Gebert | Communications Deputy | Councilman Joe Buscaino
City of Los Angeles | www.la15th.com



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Darling Magazine: [San Pedro: Why It's One of LA's Emerging Spots](#)

Avalon Arts & Cultural Alliance: [Wilmington Art Walk](#)

7.6 Exhibit 6 – My August 7, 2019 offer to narrow

Subject: Re: CPRA request (CD15.2019.06.30.a)
From: adrian@123mail.org
Date: 8/7/19, 10:29 AM
To: "Amy Gebert" <amy.gebert@lacity.org>

Ms. Gebert,

I feel like you're not reading what I write. I also feel like whoever is writing your responses is not reading what I write. Also, in this request I asked for very specific records, not a broad search, so the DCA's thoughts about why Weaver isn't on point are even more irrelevant than they are on their face.

Finally, your response makes absolutely no sense. If you would like me to discuss this directly with whoever is writing these responses over at the CA's office it will probably minimize misunderstanding produced by your paraphrasing. As a gesture of good faith, perhaps you will clarify what you mean by this: "it would leave to me to adjudicate the order and persons which would compromise a specific number of records which would violate the spirit of the California Public Records Act"

In any case, why don't you drop part 2 of my request. Thus the revised request is for:

emails in the possession of anyone at CD15 including Mr. Buscaino using any email addresses whatsoever from January 1, 2019 through June 30, 2019 that:

1. contain the word "encampment" OR
3. contain the string "UHRC"

And seriously, it would almost certainly be more efficient for me to discuss this matter directly with the DCA, and I am happy to do so.

Thanks again, Ms. Gebert!

Adrian

On Wed, Aug 7, 2019, at 10:21 AM, Amy Gebert wrote:

Legally, there is not a precedent for me to restrict records by their number because that would be problematic for a number of reasons including that it would leave to me to adjudicate the order and persons which would compromise a specific number of records which would violate the spirit of the California Public Records Act. Additionally, in Weaver v. Superior Court, the requestor asked for very specific records, not a broad search.

Currently, in one portion of your request, you requested any communication between any of the 21 persons in our office and any of the 2,800 employees in the LA Sanitation Department. An example of narrowing this portion of your request would be to list the specific persons in the Department and the specific persons in our department with whom you would like records on a specific topic. All the best,
Amy

On Mon, Aug 5, 2019 at 4:08 PM <adrian@123mail.org> wrote:
Hi Ms. Gebert,

I did narrow my request by limiting the time period precisely as in your list of examples. Therefore, as you have promised, please "review it." Examples of reviewing it would be to comply with the law by giving me an estimated date of production, or to engage in the mandated process of assisting me to overcome practical obstacles to reviewing these records.

Even better would be if CD15 would actually just comply with the law. Examples of complying with the law would be running the search before refusing to produce the records so that you could tell me precisely how many records were involved before invoking section 6255(a), or actually doing the mandated weighting test of public interest in withholding vs. public interest in producing, rather than treating "burdensomeness" as some kind of per se exemption, which it is not, or, even better, by just producing the requested records rather than sending me nonresponsive replies that make it clear that, whether through inattention or something else, you're not actually even engaging with the content of our conversation.

In any case, since it seems to have escaped your attention, I narrowed my request to be for whatever time frame contains the most recent 14,400 records. Although you've claimed that there are "up to 20,000 records" and it's therefore impossible to understand how many records there are, for the sake of having something concrete to discuss I'm assuming that there are about 20,000. Thus I've narrowed the scope of my request, even though not one thing in the law requires me to do so, by 28%.

Please tell me your estimated date of production. Also, like I said, I'm happy to discuss it directly with the DCA whose suggesting these responses.

Thanks!

Adrian

On Mon, Aug 5, 2019, at 3:58 PM, Amy Gebert wrote:

7.7 Exhibit 7 – Gebert’s August 16, 2019 response

Subject: Re: CPRA request (CD15.2019.06.30.a)
From: adrian@123mail.org
Date: 8/7/19, 10:29 AM
To: "Amy Gebert" <amy.gebert@lacity.org>

Ms. Gebert,

I feel like you're not reading what I write. I also feel like whoever is writing your responses is not reading what I write. Also, in this request I asked for very specific records, not a broad search, so the DCA's thoughts about why Weaver isn't on point are even more irrelevant than they are on their face.

Finally, your response makes absolutely no sense. If you would like me to discuss this directly with whoever is writing these responses over at the CA's office it will probably minimize misunderstanding produced by your paraphrasing. As a gesture of good faith, perhaps you will clarify what you mean by this: "it would leave to me to adjudicate the order and persons which would compromise a specific number of records which would violate the spirit of the California Public Records Act"

In any case, why don't you drop part 2 of my request. Thus the revised request is for:

emails in the possession of anyone at CD15 including Mr. Buscaino using any email addresses whatsoever from January 1, 2019 through June 30, 2019 that:

1. contain the word "encampment" OR
3. contain the string "UHRC"

And seriously, it would almost certainly be more efficient for me to discuss this matter directly with the DCA, and I am happy to do so.

Thanks again, Ms. Gebert!

Adrian

On Wed, Aug 7, 2019, at 10:21 AM, Amy Gebert wrote:

Legally, there is not a precedent for me to restrict records by their number because that would be problematic for a number of reasons including that it would leave to me to adjudicate the order and persons which would compromise a specific number of records which would violate the spirit of the California Public Records Act. Additionally, in Weaver v. Superior Court, the requestor asked for very specific records, not a broad search.

Currently, in one portion of your request, you requested any communication between any of the 21 persons in our office and any of the 2,800 employees in the LA Sanitation Department. An example of narrowing this portion of your request would be to list the specific persons in the Department and the specific persons in our department with whom you would like records on a specific topic. All the best,
Amy

On Mon, Aug 5, 2019 at 4:08 PM <adrian@123mail.org> wrote:
Hi Ms. Gebert,

I did narrow my request by limiting the time period precisely as in your list of examples. Therefore, as you have promised, please "review it." Examples of reviewing it would be to comply with the law by giving me an estimated date of production, or to engage in the mandated process of assisting me to overcome practical obstacles to reviewing these records.

Even better would be if CD15 would actually just comply with the law. Examples of complying with the law would be running the search before refusing to produce the records so that you could tell me precisely how many records were involved before invoking section 6255(a), or actually doing the mandated weighting test of public interest in withholding vs. public interest in producing, rather than treating "burdensomeness" as some kind of per se exemption, which it is not, or, even better, by just producing the requested records rather than sending me nonresponsive replies that make it clear that, whether through inattention or something else, you're not actually even engaging with the content of our conversation.

In any case, since it seems to have escaped your attention, I narrowed my request to be for whatever time frame contains the most recent 14,400 records. Although you've claimed that there are "up to 20,000 records" and it's therefore impossible to understand how many records there are, for the sake of having something concrete to discuss I'm assuming that there are about 20,000. Thus I've narrowed the scope of my request, even though not one thing in the law requires me to do so, by 28%.

Please tell me your estimated date of production. Also, like I said, I'm happy to discuss it directly with the DCA whose suggesting these responses.

Thanks!

Adrian

On Mon, Aug 5, 2019, at 3:58 PM, Amy Gebert wrote:

7.8 Exhibit 8 – Gebert’s August 16, 2019 response

Re: CPRA request (CD15.2019.06.30.a)

Subject: Re: CPRA request (CD15.2019.06.30.a)
From: Amy Gebert <amy.gebert@lacity.org>
Date: 8/23/19, 4:45 PM
To: adrian@123mail.org

My apologies for the delay. We are currently still at 10,000+ pages of records for this broad search which given my estimates will take our office until April 2021 to complete because we expect numerous records to exempt in whole or in part under the exemptions set forth in the government code which will require additional review. Again, we recommend narrowing your request based on any of the examples I have outlined.

All the best,
Amy

On Fri, Aug 23, 2019 at 7:32 AM <adrian@123mail.org> wrote:
Good morning, Ms. Gebert,

I'm just wondering about the status of this matter.

Thank you,

Adrian

On Fri, Aug 16, 2019, at 5:22 PM, adrian@123mail.org wrote:

Ms. Gebert,

As I said, the law requires you to do the search before you make some kind of burdensomeness claim or before giving production estimates. In this case even though I narrowed the request by much more than 40% your estimate by close to that much. We need facts in order to discuss the kind of 6255(a) claim you're trying to make.

Also, there's no reason to cut down the search as you suggest. The ONLY allowable reason for taking time to produce records is that they must be reviewed for potential exemptions. The specific types of emails you ask me to exclude are a priori not exempt, so their exclusion would not change a good faith production estimate at all. We already know that that material is not exempt, so why would you even look at it?

And finally, I'm not sure what distinction you're trying to make about custodians. In the context of the CPRA the custodian of a record is the person who has that record in their possession. CD15 staff members are custodians of all the records I'm requesting.

So listen, you claim you did a search and got a putatively voluminous set of records. Can you please tell me how many emails the search turned up so that we have something concrete to discuss? It's absolutely implausible that I could cut my request down so much and yet your production estimate barely changes at all.

In short, how many emails are we talking about here?

Thanks!

Adrian

On Fri, Aug 16, 2019, at 5:14 PM, Amy Gebert wrote:

Ah! That totally makes way more sense than Cultural Affairs. And I did conduct a reasonable search for your previous request and I would still need to adjudicate because the records are maintained in individual inboxes.

Regarding your revised request for all emails with the term encampment or UHRC. A search for these terms still resulted in a voluminous number of records that would require over a year to review. Based on these results, your request is too broad. In an effort to provide you with the records you seek in a more timely manner, we request that you narrow the time frame of your request, make more specific the search terms or identify specific custodians of records you would like to search.

For example, the UHRC sends a daily email with multiple pages of attachments. If this report was excluded from the request, or if you asked to obtain it directly from its custodian that would help narrow the request.

Another example is that the word encampment frequently appears in daily, weekly or monthly newsletters from 3rd parties that can be 5 to 20 pages apiece and the same newsletter can appear in multiple staffers inboxes. Following any of the above recommendations may help reduce the volume of request and/or give you a better indication of the types of records you are both seeking and not seeking.

All the best,
Amy

On Thu, Aug 8, 2019, 3:57 PM <adrian@123mail.org> wrote:

Hi Ms. Gebert!

Boy, this conversation is really getting off the rails in a totally unexpected way!

Here are the search criteria for my request:

emails in the possession of anyone at CD15 including Mr. Buscaino using any email addresses whatsoever from January 1, 2019 through June 30, 2019 that: 1. contain the word "encampment" OR 3. contain the string "UHRC"

Now, as to the rest of your theory about adjudication, can I just point out that these emails are viewed in a

7.9 Exhibit 9 – Gebert’s November 15, 2019 response

Re: CPRA request (CD15.2019.06.30.a)

Subject: Re: CPRA request (CD15.2019.06.30.a)
From: Amy Gebert <amy.gebert@lacity.org>
Date: 11/15/19, 2:42 PM
To: adrian@123mail.org

Good afternoon,

We are still processing this request per the timeframe of my original email. Please let me know if you would like to modify or narrow your request to expedite the return time on this request.

All the best,
Amy

On Thu, Nov 7, 2019 at 8:27 AM <adrian@123mail.org> wrote:

Good morning, Ms. Gebert!

Please let me know how much of this material is ready. Your original estimate was for about 24 months to review 10K pages. While I believe that such a delay is illegal under the CPRA, even if we take it as valid for the sake of argument, more than 20% of the time has now passed. If you're operating in good faith, which again I don't believe that you are but let's assume so arguendo, you ought to have about 2K pages reviewed by now. Please advise immediately.

thanks,

Adrian

On Fri, Oct 18, 2019, at 6:16 PM, adrian@123mail.org wrote:

Hi Ms. Gebert,

Can you please let me know how much of this material is ready to view at this point?

Thanks!

Adrian

On Wed, Oct 9, 2019, at 7:25 AM, adrian@123mail.org wrote:

Hi Ms. Gebert,

I just want to let you know that I will be in tomorrow to look at whatever material you've prepared from this request.

Thanks!

Adrian

On Sun, Oct 6, 2019, at 11:32 AM, adrian@123mail.org wrote:

Hi Ms. Gebert!

Just wondering if any of this material at all is ready. Please advise.

Thanks,

Adrian

On Mon, Sep 23, 2019, at 6:39 PM, adrian@123mail.org wrote:

Hi Ms. Gebert,

Can you tell me how many of these "10,000+" pages of emails you've processed so far? given that you've estimated 18 months to finish the whole set, and that over a month ago, I would estimate you have about 600 pages ready. Can you please send me those?

Thanks!

Adrian

On Fri, Aug 23, 2019, at 6:11 PM, adrian@123mail.org wrote:

Ms. Gebert,

It is not plausible that it will take your office 20 months to review 10K pages of emails. In my extensive experience, reviewing 300 emails per hour is exceedingly easy. If we say 300 pages instead, which is far, far fewer than 300 emails, we're talking about less than 34 hours. Round it up to 40 hours and what you're proposing is that your office spend 2 hrs per month fulfilling this request.

That's not compliance with the law, it's defiance. The California court of appeal in Markham v. Santa Monica etc. was pretty concerned at that agency's taking one single month to produce records. The court in Weaver v. ??? held that the agency was required to expend a 40 hour week *and* more than \$3000 in salaries to fill a request. Your office is, by this same reasoning, required to spend more than two hours per month to fill this one.

I am certainly willing to compromise, Ms. Gebert, but you will have to negotiate in good faith (which, by the way, is explicitly required by the CPRA) for us to find a way to do so. Let's take the (extreme) overestimate of 40 hours to review 10K pages and you commit to spending 2 hours per week on this, which should get you done sometime in January 2020. This is an extreme compromise on my part, and I hope you will either accept it or get some legal advice from the City Attorney, because as it stands you're not at all in compliance with the law and none of your offers are grounded in reality.

Thanks!

Adrian

7.10 Exhibit 10 – January 2020 request for status update

Re: CPRA request (CD15.2019.06.30.a)

Subject: Re: CPRA request (CD15.2019.06.30.a)
From: adrian@123mail.org
Date: 1/23/20, 2:01 PM
To: "Amy Gebert" <amy.gebert@lacity.org>

Hi Ms. Gebert,

You have been sitting on this for seven months now. I will need to come in and inspect whatever part of it is finished. Please advise as to what that is. Please don't continue to ignore this request.

Thanks,

Adrian

On Fri, Nov 15, 2019, at 2:46 PM, adrian@123mail.org wrote:

Hi Ms. Gebert!

How much is ready now?

If none then your estimate was too long as you've not yet begun to process.

If some, then please let me know when I can come see it.

Furthermore, please note that partial productions on demand are required by the CPRA since the processed material is itself a public record and each time I ask you to see it is a new request. And each time you refuse or ignore me is a new violation.

Why won't you let me see what you've prepared already?

Thanks!

Adrian

On Fri, Nov 15, 2019, at 2:42 PM, Amy Gebert wrote:

Good afternoon,

We are still processing this request per the timeframe of my original email. Please let me know if you would like to modify or narrow your request to expedite the return time on this request.

All the best,

Amy

On Thu, Nov 7, 2019 at 8:27 AM <adrian@123mail.org> wrote:

Good morning, Ms. Gebert!

Please let me know how much of this material is ready. Your original estimate was for about 24 months to review 10K pages. While I believe that such a delay is illegal under the CPRA, even if we take it as valid for the sake of argument, more than 20% of the time has now passed. If you're operating in good faith, which again I don't believe that you are but let's assume so arguendo, you ought to have about 2K pages reviewed by now. Please advise immediately.

thanks,

Adrian

On Fri, Oct 18, 2019, at 6:16 PM, adrian@123mail.org wrote:

Hi Ms. Gebert,

Can you please let me know how much of this material is ready to view at this point?

Thanks!

Adrian

On Wed, Oct 9, 2019, at 7:25 AM, adrian@123mail.org wrote:

Hi Ms. Gebert,

I just want to let you know that I will be in tomorrow to look at whatever material you've prepared from this request.

Thanks!

Adrian

On Sun, Oct 6, 2019, at 11:32 AM, adrian@123mail.org wrote:

Hi Ms. Gebert!

Just wondering if any of this material at all is ready. Please advise.

Thanks,

Adrian

On Mon, Sep 23, 2019, at 6:39 PM, adrian@123mail.org wrote:

Hi Ms. Gebert,

Can you tell me how many of these "10,000+" pages of emails you've processed so far? given that you've estimated 18 months to finish the whole set, and that over a month ago, I would estimate you have about 600 pages ready. Can you please send me those?

7.11 Exhibit 11 – Gebert’s March 2, 2020 announcement

Subject: CPRA request (CD15.2019.06.30.a)
From: CD15 CPRA Team <cd15cpra@lacity.org>
Date: 3/2/20, 5:29 PM
To: adrian@123mail.org

A part of your request will ready for collection by 10 AM tomorrow at LA City Clerk's Office, LA City Hall, 200 N Main St., Rm 395 Los Angeles, CA 90012. Please note that some of the records are exempt in part or whole due to the privacy and deliberative process exemptions under the California Public Records Act.

Our office must print responsive records for redaction purposes. We charge 10 cents per page.

To view your results you can a) come to City Hall and view the documents for free, b) come to City Hall, pick up the documents and pay 10 cents per page that you take with you, or c) if you would rather mail a check to City Hall we can email you a scanned copy of the results. Note: there are a couple hundred of pages of results.

-CD15 CPRA Team

7.12 Exhibit 12 – My March 2, 2020 request for PDFs

Subject: Re: CPRA request (CD15.2019.06.30.a)
From: adrian@123mail.org
Date: 3/2/20, 5:51 PM
To: "Amy Gebert" <amy.gebert@lacity.org>

Ms. Gebert,

You formerly told me that there were 20,000 pages of records and that it would take you until April 2021 to produce. Now there are a couple hundred pages? And it took you eight months to produce them? At a rate of about 25 pages a month? This is what you're telling me? Please scan these and email them to me at no charge as the law requires.

Thanks,

Adrian

On Mon, Mar 2, 2020, at 5:29 PM, CD15 CPRA Team wrote:

A part of your request will ready for collection by 10 AM tomorrow at LA City Clerk's Office, LA City Hall, 200 N Main St., Rm 395 Los Angeles, CA 90012. Please note that some of the records are exempt in part or whole due to the privacy and deliberative process exemptions under the California Public Records Act.

Our office must print responsive records for redaction purposes. We charge 10 cents per page.

To view your results you can a) come to City Hall and view the documents for free, b) come to City Hall, pick up the documents and pay 10 cents per page that you take with you, or c) if you would rather mail a check to City Hall we can email you a scanned copy of the results. Note: there are a couple hundred of pages of results.

-CD15 CPRA Team

7.13 Exhibit 13 – Gebert’s August 4, 2020 announcement

Subject: Public Records Requests
From: CD15 CPRA Team <cd15cp@lacity.org>
Date: 8/4/20, 6:30 PM
To: adrian@123mail.org

To Whom It May Concern,

Please see the attached for the results of your CPRA requests. Please note that some of the records are exempt in whole or in part due to the privacy and deliberative process exemptions under the California Public Records Act. Please note we scanned the documents both front and back which results in blank pages for single-sided documents. There are 3 attachments to this email with more to follow.

CPRA AR 8 4 Part 1 to Part 9 - are only part of the results for request CD15.2019.06.30.a. This request is not anticipated to be completed until 2021. A portion of these results were the results that were available for pick up at the City Clerk's Office.

The first three emails of Part 1 include records related to CD15.2019.06.05.a. CPRA AR 8 4-2020 and CPRA AR 8 4-2 2019 are the results for request CD15.2020.02.23.a.

For request CD15.2019.10.18.a, the search was conducted as the requestor specified and returned no results.

We sincerely apologize for the delay. Due to the unprecedented nature of the COVID-19 pandemic, City employees are being required to telecommute or self-quarantine for the foreseeable future. In addition to the declaration by Governor Gavin Newsom that California is in a state of emergency, Mayor Eric Garcetti issued a guideline on March 12, 2020, requiring the closure of the City Hall complex, as well as requiring all city agencies to implement telecommuting. Due to these circumstances, our office will be temporarily waiving production costs for public records requests until we return to our offices.

Sincerely,
CD15 CPRA Team

— Attachments: —

CPRA AR 8 4-2 2019.pdf	27 bytes
CPRA AR 8 4-2020.pdf	27 bytes
CPRA AR 8 4 Part 6.pdf	27 bytes

7.14 Exhibit 14 – My August 4, 2020 request for MBOXes or EMLs

Subject: Fwd: Re: Public Records Requests
From: adrian@123mail.org
Date: 8/4/20, 7:10 PM
To: "Amy Gebert" <amy.gebert@lacity.org>

Dear Ms. Gebert,

Let me sum up my objections to this production, which is not only in violation of the CPRA, but is also useless.

1. The law requires CoLA to produce emails as EML or MBOX. Instead you've printed them on paper and scanned them to PDF without OCR and with interspersed blank pages. The emails are broken up across files with no indication of which goes where.
2. The law requires CoLA to cite exemptions to justify withholding data. When you printed these emails you deleted reams of metadata and yet you have not cited any exemptions to justify this. Please either cite exemptions or produce the emails in native format.
3. The law requires CoLA to produce electronic files in electronic formats. You've converted spreadsheets to PDFs in violation of this requirement, also rendering them useless.
4. The law forbids CoLA to delay production. You told me that it would take CD15 21 months to complete this request and yet according to the metadata in the PDFs you sent you did most of this work today.
5. You told me that it would take so long to produce due to the need to review and redact (and "adjudicate", whatever that was supposed to mean). And yet you've done none of that, but rather put off working on the requests for over a year and then finishing them up in days.

Please produce all these emails in MBOX or EML format immediately and the other files in their respective native formats.

thanks,

Adrian

----- Original message -----

From: CD15 CPRA Team <cd15cp@lacity.org>
To: adrian@123mail.org
Subject: Re: Public Records Requests

7.15 Exhibit 15 – My August 4, 2020 email to Bethelwel Wilson

Subject: CD15 CPRA staffing

From: adrian@123mail.org

Date: 8/4/20, 7:16 PM

To: "Bethelwel Wilson" <bethelwel.wilson@lacity.org>

CC: "Amy Gebert" <amy.gebert@lacity.org>, "Frank Mateljan" <frank.mateljan@lacity.org>

Hi Mr. Wilson!

I'm just wondering if whoever in your office staffs CPRA requests for CD15 wants to meet and confer with me about how we can move forward on these CPRA matters without another lawsuit?

Thanks,

Adrian

7.16 Exhibit 16 – Wilson’s August 5, 2020 response

Subject: Re: CD15 CPRA staffing
From: Bethelwel Wilson <bethelwel.wilson@lacity.org>
Date: 8/5/20, 9:15 AM
To: adrian@123mail.org
CC: Amy Gebert <amy.gebert@lacity.org>, Frank Mateljan <frank.mateljan@lacity.org>

We will check in with Ms. Gebert regarding status.

On Wed, Aug 5, 2020 at 8:51 AM <adrian@123mail.org> wrote:
Dear Mr. Wilson,

This is about my request CD15.2019.06.30.a. I'm attaching a copy for your reference. The short version of the story is that I asked for six months worth of emails. Ms. Gebert spent the next few months refusing to search and also telling me the request wouldn't be ready until 2021. Earlier this year but pre-pandemic she finally produced about 200 pieces of paper for inspection, none of which had been printed before November 2019 and most of which had been printed in 2020.

Then yesterday she sent me about a zillion MBs of printed paper scanned to PDF, mostly not even responsive to my request, none of which was printed earlier than late September 2019. She continues to claim that the request won't be complete until 2021 and yet (a) she didn't even start working on it for more than three months after receipt and (b) any claims that the "voluminosity" of my request is a factor in her delay is strongly undercut by the fact that she completely ignored my date range and arbitrarily printed out what looks like many hundreds of nonresponsive pages.

In this case, in this venue, I'm not even complaining about the file formats. I'm also not complaining about the fact that every single one of the redactions by which, I imagine, Ms. Gebert might be tempted to justify the delay, is of email addresses all exemption claims to which have been waived due to prior release in response to other requests and were therefore unnecessary.

Nor about the application of 6255(a) by CoLA to justify redacting constituent names from emails at all. We'll settle all those matters eventually but not in this particular case. I'm just complaining about the unreasonable delay which, as I said, is provably unreasonable, and about the haystacking of responsive records amongst many, many, random nonresponsives.

Thanks!

A.

On Wed, Aug 5, 2020, at 8:21 AM, Bethelwel Wilson wrote:

To which request are you referring? When was it sent?

On Wed, Aug 5, 2020 at 7:35 AM <adrian@123mail.org> wrote:

Thanks, Mr. Wilson.

My experience in filing lawsuits has shown that your theory that it doesn't result in quicker turnarounds isn't based on anything real. You yourself have settled four or five of my cases based purely on slow productions. The facts here are far less favorable to the City than any of those and I'm sorry you weren't willing to take the time to look at them before sending me this semantically bankrupt response.

The pandemic is unrelated to this request, the putative voluminosity is unrelated to the violations, and Ms. Gebert's other responsibilities are also unrelated, all provably so. If I filed on this one I have no doubt that you'd settle immediately. It's like the CD11 case but even more ludicrously inept. I'm sorry no one's interested in discussing it rather than paying to settle yet another petition, but I suppose I'm not surprised.

A.

On Wed, Aug 5, 2020, at 7:28 AM, Bethelwel Wilson wrote:

Hello Mr. Riskin,

As you are aware, Ms. Gebert is the custodian of records for CD15 and handler of CPRA requests. If you have multiple voluminous requests pending with her office please continue to work with her regarding production dates. Please keep in mind that filing a lawsuit will not result in a quicker turnaround for receipt of your documents, as Ms. Gebert must also gather responsive records for other CPRA requests on top of other responsibilities she must fulfill during this challenging pandemic.

-B

On Tue, Aug 4, 2020 at 7:16 PM <adrian@123mail.org> wrote:

Hi Mr. Wilson!

7.17 Exhibit 17 – Gebert’s August 7 email re CD15’s technological capabilities

Subject: Re: Re: Public Records Requests
From: CD15 CPRA Team <cd15cpra@lacity.org>
Date: 8/7/20, 5:15 PM
To: adrian@123mail.org

Unfortunately, the COVID-19 pandemic has caused numerous constraints on our office including increased workloads, technological limitations, the closure of physical offices, among other constraints as we continue to process this voluminous request. Additionally, our office does not have the technology or the staff with the level of technical expertise needed to produce/redact in MBOX format.

We have produced records for this request in March and August. We estimate that the next date for a partial production of records to be September 4th.

Thank you for working with us during this difficult time. We hope you are staying safe and healthy.

-CD15 CPRA Team

On Tue, Aug 4, 2020 at 7:10 PM <adrian@123mail.org> wrote:

Dear Ms. Gebert,

Let me sum up my objections to this production, which is not only in violation of the CPRA, but is also useless.

1. The law requires CoLA to produce emails as EML or MBOX. Instead you've printed them on paper and scanned them to PDF without OCR and with interspersed blank pages. The emails are broken up across files with no indication of which goes where.
2. The law requires CoLA to cite exemptions to justify withholding data. When you printed these emails you deleted reams of metadata and yet you have not cited any exemptions to justify this. Please either cite exemptions or produce the emails in native format.
3. The law requires CoLA to produce electronic files in electronic formats. You've converted spreadsheets to PDFs in violation of this requirement, also rendering them useless.
4. The law forbids CoLA to delay production. You told me that it would take CD15 21 months to complete this request and yet according to the metadata in the PDFs you sent you did most of this work today.

7.18 Exhibit 18 – December 2019 request from BOE to ITA for MBOX export

ITA
CPRA/eDiscovery Request Form

1. **Date Form Filled:** 12-16-2019
2. **Name of the Requester:** Kris Johns
3. **Email of the Requester:** eng.riskmgr@lacity.org
4. **Department/Outside Entity Name:** ITA
5. **Name of Case and Case Number (if applicable):** NextRequest #19-7232
6. **Search Start Date (mm/dd/yyyy):** 12/16/2017
7. **Search End Date (mm/dd/yyyy):** 12/16/2019
8. **List all City Email Addresses or departments to Search (Indicate TO or FROM):** TO or FROM Bureau of Engineering BOE staff.
9. **List all external email addresses to search (indicate TO or FROM):** Any applicable
10. **List Search Terms:** (A single term is a single word such as “test”. A phrase is a group of words surrounded by double quotes such as “this is test”. Multiple terms can be combined together with AND/OR to form a more complex query/search: “Nichols Canyon” OR “Nichols” OR “Nichols Cyn”
11. **Court ordered/legal date, if applicable (mm/dd/yyyy):** 12/20/2019
12. **External drive provided to store the search results:**
NO (list email address to receive results): eng.riskmgr@lacity.org

NOTE: THE SYSTEM CAN ONLY PROVIDE SEARCH RESULTS IN MBOX FORMAT.

**7.19 Exhibit 19 – A recent CPRA request involvin an MBOX
produced by ITA**

< Request #20-5250 >

☒ CLOSED

Emails between katie.kiefer@lacity.org and anyone in BOE's Downtown LA Streetcar project from 2017 through July 2020 along with attachments as well. If you can do these in eml or mbox format that would be best for me.

Received August 2, 2020 via web

Departments Public Works: Bureau of Engineering

Documents

[20-5372-1.zip](#)



[takeout-20200812T210435Z-001.zip](#)



Staff

*Point of
Contact* Kris J.



Request Published

Public

August 13, 2020, 5:25pm

Request Closed [Hide](#)

Public

Dear Requester:

We have reviewed your request and the responsive documents have been provided to you.

If you have any questions, please respond to this email.

Respectfully,

BOE CPRA

August 13, 2020, 4:57pm

External Message

Public

Great! Thanks, Richard! I'm glad you were able to get the emails from ITA so quickly.

August 13, 2020, 4:57pm by Kris J. (Staff)

Due Date Changed

Public

08/26/2020 (was 08/12/2020).

August 13, 2020, 4:54pm

Document(s) Released

Public

takeout-20200812T210435Z-001.zip

August 13, 2020, 4:53pm

Document(s) Released

Public

20-5372-1.zip

August 13, 2020, 4:53pm

External Message

Public

Kris,

Yes, ITA provided the email from the retired staff member in mbox format.

Thanks,

-Richard

August 13, 2020, 4:36pm by Richard Louie (Staff)

7.20 Exhibit 20 – Google email manual on MBOXes

7.21 Exhibit 21 – August 7, 2020 email from me to Gebert

Subject: Re: CPRA request (CD15.2019.06.30.a)
From: adrian@123mail.org
Date: 8/7/20, 5:28 PM
To: "Amy Gebert" <amy.gebert@lacity.org>

Good day, Ms. Gebert!

September 4 of what year?

Also, please don't tell me you don't have the technology or staff with expertise. That's not the reason you won't produce MBOX files and if you don't know that you ought to have asked someone about it before taking Mr. Wilson's unsupported word that it was a true or even reasonable claim to make.

All you have to do is ask ITA to export MBOXes for you and they will! Then all you have to do is review and redact them. You can redact them in Notepad, which I know you have on your computer. And it's far easier to use than MS Word, which I'm guessing most of your staff are capable of handling. And it's more effective than the method you're using now. And it's faster. Or you can just not redact them, since as far as I can see your redactions aren't justifiable. And they'll get the date range right, so you'll have less to do!

Of course, Mr. Wilson probably didn't tell you to tell me that nonsense about COVID, which happened nine months after this request and therefore about six months after you ought to have been done with it. And you're welcome for my working with you during this difficult time. I wish you all would return the favor but I guess I certainly didn't, don't, and won't expect you to.

A.

On Fri, Aug 7, 2020, at 5:15 PM, CD15 CPRA Team wrote:

Unfortunately, the COVID-19 pandemic has caused numerous constraints on our office including increased workloads, technological limitations, the closure of physical offices, among other constraints as we continue to process this voluminous request. Additionally, our office does not have the technology or the staff with the level of technical expertise needed to produce/redact in MBOX format.

We have produced records for this request in March and August. We estimate that the next date for a partial production of records to be September 4th.

7.22 Exhibit 22 – NextRequest Staff User Manual



NextRequest Testing Guide for Staff Users

Welcome to NextRequest! Your Agency will be using NextRequest to manage and process public records request. As Support Staff in the system you will be assisting internally with requests by uploading documents and providing additional information as needed.

This guide will take you through (in about 30 minutes) the most common actions that you will take working on a request in NextRequest. If you have any questions as you work your way through the actions please reach out to support@nextrequest.com.

Action 1: Create a test request

In order to test out the various features in NextRequest you will need to first create a test request. This is also the process you may use in the future to log requests that come into your office by other methods (phone, email, fax, etc). To submit a request follow these steps:

1. Go to your agency's NextRequest portal
2. Click the MAKE REQUEST button in the top left
3. Enter request description
4. Enter a email address for the requester (different from your NextRequest account email. Remember that this email address will be sent notifications)
5. Click the MAKE REQUEST button

Action 2: Activate your account and sign in

If this is the first time you are logging in, you will need to activate your account. To do this follow these steps:

1. Click the Sign In link in the top right
2. Click the link "Lost password / Can't sign in?"
3. Enter your email address and click the SUBMIT button
4. When prompted enter your password and confirm it
5. Find the confirmation email in your inbox (check your spam folder if you don't see it) and click the confirmation link

Once you've activated your account you can use your email address and password to sign in. The system will remember your credentials for two weeks.

7.23 Exhibit 23 – NextRequest 2019 Invoice to CoLA

NextRequest Quote - City of Los Angeles

Current Date: September 27, 2019 (pricing valid for 60 days from current date)

Customer	City of Los Angeles	Term Start	November 1, 2019
Address	200 N Spring St, Los Angeles, CA	Term End	October 31, 2020
Contact	Charlene Dennis	Invoicing	Invoiced annually

Required Items	Price	QTY	Subtotal
Annual NextRequest License (yearly) • Record Request Management Module • Unlimited users in the specified agency or departments • Software as a Service (SaaS); fully hosted, maintained, and cloud-based • Support: Dedicated customer success staff; responses in ≤ 1 business day	\$98,534.00	1	\$98,534.00
Redaction Module (yearly) • Unlimited users	\$9,853.00	1	\$9,853.00

Total \$108,387.00

7.24 Exhibit 24 – November 27, 2019 NextRequest training email invite

To: Rachel Meresman[rachel@nextrequest.com]
Cc: Jenny Chavez[jenny.chavez@lacity.org]; Olivia Alvarez[olivia.alvarez@lacity.org]
From: Amy Gebert
Sent: Wed 11/27/2019 8:28:54 PM
Subject: Re: 11 15 19 - CD 15 Joe Buscaino--> Next Request CPRA Tracking System

213-473-7015

All the best,
Amy

On Tue, Nov 26, 2019 at 10:39 AM Rachel Meresman <rachel@nextrequest.com> wrote:

Hi Amy,
No worries! December 2nd at 2pm works for me. What is the best number to reach you and/or Jenny at?

Best,
Rachel

On Mon, Nov 25, 2019 at 1:45 PM Amy Gebert <amy.gebert@lacity.org> wrote:

My apologies for the delay. Jenny is on vacation this week. Are you free on December 2nd between 1 and 2:30 pm or Tuesday the 3rd between 2 pm and 4 pm?
All the best,
Amy

On Mon, Nov 25, 2019 at 1:43 PM Rachel Meresman <rachel@nextrequest.com> wrote:

Hi Amy,
I wanted to check in about setting up a call. I'm available the rest of today if you happen to still be free. I'm also free all day tomorrow with the exception of 3-4pm. Let me know if there's a time in there that works for you.

Best,
Rachel

On Wed, Nov 20, 2019 at 5:00 PM Rachel Meresman <rachel@nextrequest.com> wrote:

Hi Amy,
I'm free all afternoon on the 25th. Would 1pm work for you? Looking forward to speaking!

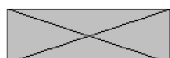
Best,
Rachel

On Fri, Nov 15, 2019 at 11:14 AM Olivia Alvarez <olivia.alvarez@lacity.org> wrote:

Hi Rachel,

I spoke briefly to Amy from Council District 15 about the Citywide Next Request roll-out. Amy is the CPRA coordinator for CD 15. She has been busy with office projects however a good time for a phone conference call are on the dates provided below. Can you please reach out to her and provide her with some good times/dates on your end. Thank you.

Thanksgiving Week Nov 25 or 26
First or second week of December



Olivia Alvarez, (213) 978-3006, Google Apps - EDiscoveries - Angels Lab

7.25 Exhibit 25 – August 6, 2012 CPRA response letter to Max Felker-Kanter

LOS ANGELES POLICE DEPARTMENT



CHARLIE BECK
Chief of Police

ANTONIO R. VILLARAIGOSA
Mayor

P. O. Box 30158
Los Angeles, California 90030
Telephone: (213) 978-2100
TDD: (877) 275-5273
Reference Number: 14.4

August 16, 2012

Mr. Max Felker-Kantor
University of Southern California
Department of History
Social Sciences Building (SOS) 153
3502 Trousdale Parkway
Los Angeles, California 90089-0034

Dear Mr. Felker-Kantor:

This letter is to respond to your request, dated August 4, 2012, and received by the Los Angeles Police Department ("Department") Discovery Section on August 6, 2012, for records pursuant to the California Public Records Act (Cal. Govt. Code Section 6250, *et seq.*, hereafter "CPRA" or "Act."). While your request was directed to the Department, it appears that the executive office of the Board of Police Commissioners ("Commission") is also in possession of certain responsive documents. Therefore, please treat this letter as the response of both the Department and the Commission.

The Police Department and the Commission are cognizant of their responsibilities under the Act. They recognize that the statutory scheme was enacted in order to maximize citizen access to the workings of government. However, the Act does not mandate the disclosure of all documents within the government's possession. Rather, by specific exemption and reference to other statutes, the Act recognizes that there are boundaries where the public's right to access must be balanced against such weighty considerations as the right of privacy, a right of constitutional dimension under California Constitution, Article 1, Section 1. The law also exempts from disclosure records that are privileged or confidential or otherwise exempt under either express provisions of the CPRA or pursuant to applicable federal or state law.

Specifically, your request seeks the following:

Materials relating to the Office of the Chief of Police under Chief William Parker, Chief Edward Davis, and Chief Daryl Gates between the years (1965 and 1992) including inter-departmental correspondence, meeting minutes, and policy directives. These materials are in Records Groups PDX, PDX/80, PDX/82, PDX/98 and PDC.

Notwithstanding the above, both the Department and Commission desire to provide the greatest degree of access to the documents in question as is reasonably possible, and legally permissible. In that regard, the boxes will be made available for your inspection immediately following a review of each box's contents by the Department, to identify any records (or information) over which an exemption would lawfully apply. As each box review is concluded, you will be notified of its availability. It is estimated that staff assigned to perform this task, in addition to their other assigned duties and responsibilities, will make every effort to complete 1-2 box reviews per week. Please note that more boxes may be available per week, depending on the overall nature of the documents contained therein.

Mr. Max Felker-Kantor

Page 3

14.4

Copies of any record shall be made following payment of the direct cost of duplication. Please note that only checks or money orders are processed at the counter. Make your check/money order payable to the LAPD. You may pick up the documents during the hours and location listed below:

Office Hours: 8:00 a.m. – 4:30 p.m. Monday – Friday, excluding holidays

Location: LAPD – Discovery Section
201 N. Los Angeles St., Space 301
Los Angeles, CA 90012

If you have any questions regarding this correspondence, please contact Senior Management Analyst Greg Toyama of the Discovery Section at (213) 978-2178.

Very truly yours,

CHARLIE BECK
Chief of Police



MARTIN BLAND, Senior Management Analyst
Officer-in-Charge, Discovery Section
Risk Management Division

cc: Richard Tefank, Executive Director, Los Angeles Police Commission

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